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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;  
 ORACLE AMERICA, INC.; a Delaware  
 corporation; and ORACLE INTERNATIONAL  
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;  
 and SETH RAVIN, an individual,

Defendants.

**Case No. 2:10-cv-0106-LRH-VCF**

**ORACLE'S MOTION FOR  
 SANCTIONS PURSUANT TO  
 FEDERAL RULE OF CIVIL  
 PROCEDURE 11, 28 U.S.C. § 1927,  
 AND THE COURT'S INHERENT  
 AUTHORITY**

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1 Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation  
 2 (together, “Oracle”) respectfully request that this Court sanction Rimini Street, Inc. (“Rimini”)  
 3 and its counsel pursuant to Federal Rule of Civil Procedure 11, 28 U.S.C. § 1927, and this Court’s  
 4 local rules and inherent authority for vexatious litigation.

5 Oracle views Rule 11 sanctions as an extraordinary action, which is why Oracle did not  
 6 seek Rule 11 sanctions when Rimini spoliated evidence, when Rimini’s CEO, Seth Ravin, lied  
 7 under oath, or when Rimini engaged in what this Court found to be “egregious litigation  
 8 misconduct.” But Rimini’s April 2, 2020, “Motion to Enforce the Court’s Orders and Judgment  
 9 Separating *Rimini I* from *Rimini II*” (ECF No. 1323) (the “Motion”) is utterly meritless, and is a  
 10 textbook example of vexatious litigation, and accordingly, Rimini and its counsel should be  
 11 sanctioned.

12 Rimini repeats arguments that multiple levels of the federal judiciary have rejected. As  
 13 discussed below, Magistrate Judge Ferenbach, Your Honor, and the Ninth Circuit have all  
 14 rejected the very arguments that Rimini brings in the Motion. The Motion is an echo chamber for  
 15 Rimini’s prior arguments in its (1) Opposition to Oracle’s First Injunction Motion, (2) Objections  
 16 to Oracle’s Proposed Orders, (3) Opposition to Oracle’s Renewed Injunction Motion,  
 17 (4) Emergency Motion to Stay filed in this Court, (5) Emergency Motion to Stay filed in the  
 18 Ninth Circuit, (6) briefing to and oral argument before to the Ninth Circuit, and (7) an opposition  
 19 to injunction compliance discovery repeating the same over breadth arguments. The only time  
 20 Rimini did not raise these arguments was in its failed *certiorari* petition, which dropped the fully  
 21 briefed issues of breadth and vagueness, and instead focused solely on its Seventh Amendment  
 22 argument. The moment that petition was filed, any dispute as to the reasonableness or clarity of  
 23 the injunction was finally resolved.

24 Rimini’s Motion is its seventh attempt to reargue its opposition to the Court’s lawful  
 25 injunction in this case. Under established Ninth Circuit precedent, Rule 11 sanctions are  
 26 warranted for bringing a motion that is duplicative of a prior meritless motion. *See Nugget*  
 27 *Hydroelectric, L.P. v. Pacific Gas & Elec. Co.*, 981 F.2d 429, 439 (9th Cir. 1992) (upholding  
 28 Rule 11 sanctions because a party’s second motion to compel largely duplicated the first) (citing

1 *Townsend v. Holman Consulting Corp.*, 929 F.3d 1358, 1362 (9th Cir. 1990) (en banc)). Rimini's  
 2 attempt to re-re-re-re-re-re-reargue more than warrants sanctions.

3 Rimini's outside counsel, Gibson, Dunn & Crutcher, LLP ("Gibson Dunn") should also be  
 4 sanctioned. As officers of the Court, Gibson Dunn has an ethical obligation not to file meritless,  
 5 bad faith motions that are interposed solely to harass an adversary. Gibson Dunn signed every  
 6 filing and made every oral argument identified above on Rimini's behalf. While an unscrupulous  
 7 client may ask counsel whether it may be possible to bring yet another motion repeating  
 8 arguments that the federal courts have rejected at every turn, it is the job of counsel to say "no."  
 9 Here, however, Gibson Dunn did Rimini's bidding, and by signing this meritless motion,  
 10 Rimini's counsel exposed themselves to sanctions.

11 On April 20, 2020, Oracle served Rimini with notice of Oracle's intention to seek  
 12 sanctions unless Rimini promptly withdrew its Motion. Twenty-one days later, the motion has  
 13 not been withdrawn. Thus, in compliance with Federal Rule of Civil Procedure 11(c)(2), Oracle  
 14 respectfully moves for sanctions pursuant to Rule 11, 28 U.S.C. § 1927, Local Rule 59-1(b), and  
 15 this Court's inherent authority.

#### 16 **I. RIMINI'S MOTION IS DUPLICATIVE OF NUMEROUS PRIOR FILINGS.**

17 The Motion reprises Rimini's numerous unsuccessful filings before this Court and the  
 18 Ninth Circuit. Rimini has on at least seven prior occasions argued that the injunction should be  
 19 limited to exclude conduct at issue in *Rimini II*. Indeed, it specifically cited—to the Ninth  
 20 Circuit—post-injunction discovery proceedings, writing "[n]ot one of [Rimini's accused  
 21 practices] was adjudicated at trial or on appeal in *Rimini I*; all five are the subject of pending  
 22 summary judgment motions in *Rimini II*." Declaration of Jacob Minne ("Minne Decl."), Ex. 1  
 23 (*Oracle USA, Inc. v. Rimini Street, Inc.*, Case No. 18-16554 (9th Cir.) ("2018 Appeal") Dkt. 46-1  
 24 at 1). As documented below, this argument was unsuccessful then, just as it was the six other  
 25 times Rimini made it.

26 Rimini's Motion again argues that "cross-use" is too broadly enjoined (ECF No. 1323 at  
 27 11), that the court must "ensure that *Rimini I*—including any contempt proceedings—remains  
 28 limited to Process 1.0" (ECF No. 1323 at 14), and that Oracle cannot "enforce the injunction

1 against processes that it expressly and successfully fought to exclude from the *Rimini I*  
 2 proceedings” (ECF No. 1323 at 16), amongst other over-worn arguments. The only thing new is  
 3 the title of Rimini’s Motion.

4 **A. Rimini’s Opposition to Oracle’s First Injunction Motion and Objection to**  
 5 **Oracle’s Proposed Orders.**

6 In 2015, when Oracle first sought an injunction, Rimini opposed the injunction by raising  
 7 the arguments it now brings in the Motion. In its November 2, 2015 Opposition to Oracle’s First  
 8 Injunction Motion, Rimini argued that Oracle’s proposed injunction “attempt[ed] to leverage its  
 9 narrow verdict with respect to Rimini processes that violated Oracle’s reproduction right into a  
 10 sweeping prohibition against conduct never adjudicated by the Court or the jury. That includes  
 11 conduct that the Court, at Oracle’s urging, confined to *Rimini II*.” (ECF No. 905 at 19); *see also*  
 12 *id.* at 21 (“Oracle’s proposed injunction also reaches issues that have not been litigated . . . [and]  
 13 is yet another attempt to resolve a live issue in *Rimini II*.”); ECF No. 1040 (oral argument  
 14 transcript) (Rimini contends that “Oracle’s proposed injunction would appear to prohibit Rimini  
 15 Street from using cloud-based servers to provide support services to its customers, even though  
 16 there is absolutely no doubt that cloud computing played no role whatsoever in *Rimini I*”).  
 17 Rimini repeated these arguments in its Objections to Oracle’s Proposed Orders. ECF No. 1055 at  
 18 3 (“A unifying theme of these concerns, however, was that Oracle was attempting to reach  
 19 conduct that was not adjudicated in the first case (*Rimini I*), and/or that is the subject of ongoing  
 20 litigation in the second case (*Rimini II*.”). This Court rejected Rimini’s arguments and issued the  
 21 first injunction. ECF No. 1049 (Order); ECF No. 1065 (Injunction).

22 Now, almost five years later, Rimini’s pending Motion repeats the same failed arguments.  
 23 Rimini argues that “[h]aving obtained the injunction based on the proceedings in *Rimini I* . . .  
 24 Oracle cannot now backtrack to enforce the injunction against processes that it expressly and  
 25 successfully fought to exclude from the *Rimini I* proceedings.” ECF No. 1323 at 16; *see also id.*  
 26 at 14 (“this Court should . . . ensure that *Rimini I*—including any contempt proceedings—remains  
 27 limited to Process 1.0, the specific conduct actually litigated and adjudicated in *Rimini I*, while  
 28 providing that any issues related to Process 2.0 can and should be litigated in *Rimini II*”).

Rimini even relies on much of the same authority, citing in both, *e.g.*, *Chicago Bd. of Educ. v. Substance, Inc.*, 354 F.3d 624 (7th Cir. 2003), *Price v. City of Stockton*, 390 F.3d 1105 (9th Cir. 2004), *Nimmer on Copyright* § 14.06, and *Iconix, Inc. v. Tokuda*, 457 F. Supp. 2d 969 (N.D. Cal. 2006).

Additionally, in its 2015 Opposition, Rimini argued that it purportedly “no longer engages in the conduct the Court and jury found infringing.” ECF No. 905 at 2; *see also id.* at 15, 24. This Court held in 2015 that “Rimini’s claim that it no longer engages in the conduct adjudged by the court and jury to infringe Oracle’s copyrights is not a basis to deny issuance of an injunction.” ECF No. 1049 at 6. Nonetheless, in the instant Motion, Rimini likewise repeatedly asserts that it “no longer” engages in the infringing conduct, going so far as to attempt to illustrate this change with a chart. ECF No. 1323 at 5-6.

**B. Rimini’s Opposition to Oracle’s Renewed Injunction Motion.**

As this Court is aware, at the conclusion of Rimini’s first appeal, the Ninth Circuit affirmed the copyright infringement verdict, reversed the jury’s verdict on the computer fraud claims, and vacated the injunction, so that this Court could have the opportunity to consider whether an injunction was warranted on the copyright claims only.

Oracle again sought an injunction, and Rimini repeated the points it previously had made in opposition. Rimini reiterated its argument that “[a]ny injunction must be limited to adjudicated conduct, in that it ‘must be narrowly tailored . . . to remedy only the specific harms shown by the plaintiffs’” in its April 4, 2018 Opposition to Oracle’s Renewed Motion for a Permanent Injunction. ECF No. 1130 at 18 (alteration in original). Rimini also claimed that the proposed injunction would enjoin “cross-use” too broadly (ECF No. 1130 at 5, 16). As Oracle explained, Oracle’s definition of cross-use “provides clear guidance, and is consistent with this Court’s and the Ninth Circuit’s guidance on cross-use.” ECF No. 1139 at 17. Additionally, this Court held at summary judgment that supporting multiple PeopleSoft customers (and, specifically, Rimini’s use of PeopleSoft licensed to City of Flint to develop and test software updates for customers other than City of Flint) was not permitted. ECF No. 474 at 13. This Court again entered the requested injunction over Rimini’s objection. ECF No. 1164 (Order; ECF No. 1166 (Injunction).

1 Yet, Rimini's instant Motion duplicates its prior failed arguments. Rimini contends that  
 2 "[a]n injunction may lawfully and constitutionally prohibit only conduct that was actually  
 3 adjudicated to be infringing (i.e., Process 1.0), and may not be enforced against unadjudicated  
 4 conduct (i.e., Process 2.0). . . ." ECF No. 1323 at 14. Rimini again contends that "cross-use" has  
 5 been too broadly enjoined. ECF No. 1323 at 11.

6 Additionally, in its 2018 Opposition, Rimini contended that its customers had "valid  
 7 licenses" to Oracle's software, such that their infringement was "innocent," purportedly rendering  
 8 an injunction inappropriate. ECF No. 1130 at 16-17. But, as this Court held, "there is no legal  
 9 precedent to support Rimini's position." ECF No. 1094 at 3:16-19. Rimini nevertheless repeats  
 10 that argument in the instant Motion. ECF No. 1323 at 3 n.1 ("all clients had valid licenses from  
 11 Oracle for the software in question").

12 **C. Rimini's District Court Motion to Stay the Second Injunction.**

13 On August 16, 2018, Rimini moved this Court for a stay of the permanent injunction  
 14 pending appeal. Rimini argued that this Court erred in enjoining all acts of infringement within  
 15 its judgment, which, in Rimini's view, included "conduct that the Ninth Circuit did not deem  
 16 infringing, and for which there is no preclusive effect." ECF No. 1168 at 9. Rimini continued,  
 17 "the parties are actively litigating these issues in *Rimini II*. There is no basis for imposing an  
 18 injunction in such a situation." *Id.* Rimini reiterated its contention that the injunction against  
 19 cross-use is overbroad. *Id.* at 11. Having previously rejected these arguments, this Court denied  
 20 the requested stay. ECF No. 1177.

21 Rimini now, *again*, contends that the purportedly overbroad "injunction is, by its own  
 22 terms and equity practice, limited to the processes adjudicated in *Rimini I* (and those not more  
 23 than colorably different)." ECF No. 1323 at 2.

24 **D. Rimini's Ninth Circuit Motion to Stay the Second Injunction.**

25 On September 14, 2018, Rimini moved for a stay of the permanent injunction in the Ninth  
 26 Circuit. Rimini again contended that the injunction "prohibited conduct that this Court expressly  
 27 did not adjudicate in the previous appeal." Minne Decl. Ex. 2 (2018 Appeal, Dkt. 4-1 at 1).  
 28 Rimini again contended that "[a]t Oracle's insistence, the district court declined Rimini's request

1 to consolidate the cases, holding that all the evidence of Rimini’s current processes must be kept  
 2 to the second proceeding.” *Id.* at 3. Key here, Rimini argued that this Court’s “conclusion—that  
 3 Rimini can be enjoined from (and potentially held in contempt for conduct in *Rimini I* that is  
 4 actively being litigated in *Rimini II*—is illogical and erroneous.” *Id.* at 12. Rimini further argued  
 5 that “[i]t is inconsistent with the principles of equity that govern the issuance of injunctions for  
 6 Oracle to nonetheless obtain an injunction in *Rimini I* prohibiting the very conduct it asked this  
 7 Court not to adjudicate in that case, and that is subject to ongoing litigation in *Rimini II*.” *Id.* The  
 8 Ninth Circuit denied Rimini’s motion to stay the injunction. Minne Decl. Ex. 3 (2018 Appeal  
 9 Dkt. 11).

#### 10 **E. Rimini’s Ninth Circuit Briefing and Oral Argument.**

11 On November 26, 2018, Rimini argued to the Ninth Circuit that “Oracle’s request for  
 12 injunctive relief [was] moot because the acts adjudicated as infringing stopped long ago.” Minne  
 13 Decl. Ex. 4 (2018 Appeal Dkt. 12 at 10). Rimini contended that “[t]he injunction as entered is  
 14 unlawfully overbroad and vague,” on the ground, *inter alia*, that the injunction enjoins cross-use.  
 15 *Id.* at 11. *See also id.* at 41-48, 50-54. And Rimini repeated these contentions during oral  
 16 argument. July 12, 2019 Oral Argument Recording at 5:34 (*available at*  
 17 [https://www.ca9.uscourts.gov/media/view.php?pk\\_id=0000034266](https://www.ca9.uscourts.gov/media/view.php?pk_id=0000034266)) (Mr. Perry: “[T]he only two  
 18 acts adjudicated as unlawful were hosting the development environments on Rimini’s own  
 19 servers, that form of local hosting, and wholesale duplication of development environments . . .  
 20 there is no causal nexus to support this injunction”); *see also id.* at 9:00 (“the five things that  
 21 [Oracle] now say[s] are in contempt of the injunction . . . are not complaining of anything that  
 22 was adjudicated in the first case”); 11:08 (contending that if “the judge’s order granting the  
 23 injunction . . . ‘only enjoin[ed] things that were adjudicated in the first case . . . we actually  
 24 wouldn’t be here”).

25 As Oracle explained during oral argument in the Ninth Circuit: (1) there “isn’t [a]  
 26 predicate legal rule that says you can only enjoin something that was strictly litigated in the first  
 27 case,” (2) the cross-use injunction is not overbroad because “the first case really was about cross-  
 28 use, and what the injunction does in the main is enjoin cross-use” and, (3) with respect to the

1 PeopleSoft license, “you really needed to keep [the client’s] materials on their servers . . . in the  
 2 first case, Rimini might not have engaged in cloud hosting . . . but if the ruling in the first case is  
 3 that you have to keep them on the client’s server, it really doesn’t matter.” July 12, 2019 Oral  
 4 Argument Recording at 14:49. Further, as Oracle argued on appeal, “Rimini’s benighted view  
 5 that the injunction is and must be limited to conduct specifically affirmed to be copyright  
 6 infringement . . . is not and has never been Oracle’s position or the law.” Minne Decl. Ex. 5  
 7 (2018 Appeal Dkt. 45 at 1). As Oracle long has argued, this Court was “free to enjoin any  
 8 conduct it found infringing (or necessary to prevent continued infringement).” *Id.*; *see also id.*  
 9 Ex. 6 (2018 Appeal Dkt. 23 at 52) (“This Court and others thus consistently have upheld  
 10 copyright injunctions that reach beyond the specific infringing conduct in which the defendant  
 11 was found to have engaged. *See, e.g., Dr. Seuss Enters., L.P. v. Penguin Books USA, Inc.*, 109  
 12 F.3d 1394, 1406 (9th Cir. 1997) (enjoining sale of entire book even though only front and back  
 13 covers were infringed); *Russian Media Grp., LLC v. Cable Am., Inc.*, 598 F.3d 302, 306-07 (7th  
 14 Cir. 2010) (upholding injunction preventing transmission of pirated and nonpirated programs ‘to  
 15 prevent the evasion of the core prohibition in the decree and to extirpate any lingering effects of  
 16 the violation sought to be remedied’)). Oracle won these arguments. Oracle’s positions have  
 17 been forthright, consistent, and successful.

18 But for minor edits to the injunction irrelevant here, the Ninth Circuit affirmed this Court,  
 19 holding, *inter alia*, that “[i]n all other respects, the injunction is not overbroad.” *Oracle USA, Inc.*  
 20 *v. Rimini St., Inc.*, 783 F. App’x 707, 711 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 850 (2020).  
 21 Remarkably undaunted, Rimini rehashes its failed arguments here.

22 Furthermore, Rimini’s July 3, 2019 supplemental authority submission to the Ninth  
 23 Circuit disproves Rimini’s contention that the Motion is “warranted and timely in light of an  
 24 expert report recently served by Oracle in *Rimini I*, which makes clear that Oracle intends to  
 25 argue that certain aspects of Process 2.0 violate the *Rimini I* injunction, even though those very  
 26 aspects have yet to be adjudicated in *Rimini II* and, indeed, are pending before the Court in  
 27 motions for partial summary judgment in that lawsuit.” ECF No. 1323 at 2. Rimini identifies  
 28 these purportedly “yet to be adjudicated” issues as the injunction’s application to cloud hosting,

1 cross-use, and Automated Framework (“AFW”) tools. ECF No. 1323 at 10-11. Not one of these  
2 issues is new: Rimini previously raised all three of them before the Ninth Circuit.

3 Rimini told the Ninth Circuit that Oracle contended that “five discrete practices” were in  
4 violation of the injunction.” Minne Decl. Ex. 1 (2018 Appeal Dkt. 46-1 at 1). Rimini identified  
5 those violative practices as including “cloud-hosting of PeopleSoft Software and Support  
6 Materials,” “cross-use of PeopleSoft Software and Support Materials,” and “Cross-Use of JD  
7 Edwards Software and Support Materials.” *Id.* Ex. 1 (2018 Appeal Dkt. 46-3 at 1-2). Rimini  
8 argued that “[n]ot one of those practices was adjudicated at trial or on appeal in *Rimini I*; all five  
9 are the subject of pending summary judgment motions in *Rimini II*.” *Id.* Ex. 1 (2018 Appeal Dkt.  
10 46-1 at 1). Rimini also shared with the Ninth Circuit its argument that AFW tools such as “the  
11 CodeAnalyzer tool and the Dev Review tool that are referenced in Oracle’s allegations . . . did not  
12 even exist during the *Rimini I* timeframe and cannot be subject to the Injunction.” *Id.* Ex. 7 (2018  
13 Appeal Dkt. 53-2 at 8). The Ninth Circuit thus knew about Rimini’s concerns (reiterated in the  
14 Motion) and rejected them.

15 **F. Rimini’s Opposition to Injunction Compliance Discovery.**

16 While simultaneously pursuing its failed appeal before the Ninth Circuit, Rimini resisted  
17 any attempt by Oracle to obtain discovery regarding Rimini’s compliance with the Court’s  
18 injunction. Rimini forced Oracle to move for an order permitting such discovery (ECF No.  
19 1199), and, in opposing that motion to compel, repeated its contention that the injunction is  
20 overbroad. Rimini argued that “Oracle seeks to use the injunction issued in *Rimini I* to prevent  
21 Rimini from using its revised support processes (‘Process 2.0’), even though Process 2.0 was  
22 never adjudicated in *Rimini I* and is instead squarely at issue in *Rimini II*.” ECF No. 1209 at 1.  
23 Rimini insisted that “Oracle cannot first fight to keep Process 2.0 out of the case, go to trial solely  
24 on Rimini’s old processes, and then, post-judgment, suddenly decide that it wants Process 2.0  
25 back in *Rimini I* for purpose of contempt proceedings.” *Id.* at 15. Rimini demanded “[f]idelity”  
26 to such a demarcation and asked the Court to deny “outright” Oracle’s requested discovery. *Id.* at  
27 1, 20.  
28

1 This Court rejected Rimini's arguments.<sup>1</sup> On April 4, 2019, Magistrate Judge Ferenbach  
 2 rejected Rimini's arguments and granted Oracle's Motion for Limited Discovery. ECF No.  
 3 1215.<sup>2</sup> Rimini did not object to Magistrate Judge Ferenbach's Order. And on June 21, 2019, this  
 4 Court entered a Post Injunction Discovery Scheduling Order directing Oracle to provide Rimini  
 5 with a "list describing conduct disclosed in *Rimini II* (including cross-use and cloud hosting)  
 6 which Oracle contends would violate Judge Hicks' injunction if it continued after the injunction  
 7 was effective." ECF No. 1232 at 2. Oracle provided Rimini with that list, in compliance with the  
 8 Court's Order, identifying, among others, cloud-hosting by companies such as Tierpoint  
 9 (formerly known as Windstream), and the use of Rimini's AFW tool as a form of cross-use.  
 10 Minne Decl. Ex. 1 (2018 Appeal Dkt. 46-3 at 1-2). Undaunted, Rimini is now recycling for the  
 11 eighth time the arguments this Court and the Ninth Circuit have repeatedly rejected.

12 **G. Gibson Dunn Signed All Filings and Made All Arguments Relevant Here.**

13 Gibson Dunn first appeared on behalf of Rimini in this matter in June 2015. See ECF  
 14 Nos. 583-586 (pro hac vice admissions). Gibson Dunn is responsible for all the representations  
 15 above: Gibson Dunn attorneys signed the relevant submissions to the Court and made the  
 16 referenced statements at oral argument. See ECF No. 905, 1055, 1130, 1168, 1209, 1323; 2018  
 17 Appeal Dkt. 4-1, 12, 46-1, 53-1 (written submissions); ECF No. 1040 (transcript of oral  
 18 argument); July 12, 2019 Oral Argument Recording (recording of oral argument). Each of those  
 19 attorneys remains counsel of record in this action. See ECF Nos. 584, 586, 1204 (*pro hac vice*  
 20 admissions). Those same attorneys were and are familiar with the case record and facts.

21 **II. RIMINI'S MOTION IS VEXATIOUS AND SHOULD BE SANCTIONED.**

22 Rimini's pending motion is duplicative, frivolous, and a waste of judicial and party  
 23 resources. Rimini and its counsel should be sanctioned under Rule 11, 28 U.S.C. § 1927, and this  
 24 Court's inherent authority.

25  
 26 <sup>1</sup> The *Rimini II* court correspondingly has held that "Oracle has met its burden of showing that the  
 27 discovery produced in *Rimini II* pursuant to this court's protective order is relevant and generally  
 28 discoverable in the *Rimini I* case. The requested information is relevant because it may provide  
 insight into Rimini's modified processes *which are nevertheless the subject of the injunction.*"  
 ECF No. 1237, May 14, 2019 Order at 3 (emphasis added).

1           **A. This Court Should Sanction Rimini and its Counsel Under Rule 11.**

2           When Rimini’s counsel signed the Motion, they certified, *inter alia*, that the Motion was  
 3 “not being presented for any improper purpose, such as to harass, cause unnecessary delay, or  
 4 needlessly increase the cost of litigation” and that “legal contentions are warranted by existing  
 5 law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for  
 6 establishing new law.” FRCP 11(b). But that was not the case. Even a cursory review of the  
 7 prior filings and law of the case in this action demonstrates that Rimini’s duplicative motion is  
 8 not warranted by existing law, is frivolous, and is improper duplicative argument that has  
 9 needlessly increased the cost of this litigation.

10           As this Court has explained, “Rule 11 sanctions are specifically designed to deter baseless  
 11 filings and frivolous litigation, to unclog the choked dockets of the federal courts, and to punish  
 12 improper conduct by lawyers and litigants.” *Schutts v. Bentley Nevada Corp.*, 966 F. Supp. 1549,  
 13 1566 (D. Nev. 1997) (citations omitted) (imposing Rule 11 sanctions on the party and counsel).  
 14 Rule 11 sanctions are appropriate where, as here, “a filing is frivolous, legally unreasonable, or  
 15 without factual foundation, or is brought for an improper purpose.” *Estate of Blue v. Cnty. of Los*  
 16 *Angeles*, 120 F.3d 982, 985 (9th Cir. 1997) (adding “[w]hen a reasonable investigation would  
 17 reveal that a claim is barred by res judicata or collateral estoppel, for example, Rule 11 sanctions  
 18 may be imposed within the district court’s discretion” and affirming Rule 11 sanctions “[b]ased  
 19 on the procedural history of this case”). This Court’s local rules also provide that “a movant who  
 20 repeats arguments will be subject to appropriate sanctions.” Local Rule 59-1(b). As the above  
 21 discussion demonstrates, Rimini has pressed the arguments in the Motion at least *seven* prior  
 22 times without success. That is the definition of a frivolous, unwarranted motion imposed for an  
 23 improper purpose.

24           The Ninth Circuit’s opinion in *Nugget* is instructive. *Nugget Hydroelectric, L.P. v. Pac.*  
 25 *Gas & Elec. Co.*, 981 F.2d 429, 439 (9th Cir. 1992) (affirming Rule 11 sanctions). In *Nugget*, the  
 26 Ninth Circuit held that Rule 11 sanctions were appropriate where the plaintiff filed a second  
 27 motion to compel that “largely duplicated its first motion to compel, which earlier had been  
 28 denied and from which denial motion for reconsideration was filed.” *Id.* The court concluded

1 that, because the “two motions to compel” were “sufficiently similar,” the second motion was  
 2 “filed for an improper purpose” or “frivolous,” such that “[s]anctions must be imposed.” *Id.*  
 3 (citing *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc)).  
 4 See also *Sanai v. Sanai*, 408 F. App’x 1, 2 (9th Cir. 2010) (“[t]he district court properly  
 5 sanctioned appellants under Rule 11 in the second action for filing duplicative causes of action.”).  
 6 Following *Nugget*, Rimini should be sanctioned for its duplicative motion.

7 Similarly, in *St. Paul Fire*, the Ninth Circuit affirmed the imposition of Rule 11 sanctions  
 8 where the appellants had “filed a second notice of removal before the first notice of removal had  
 9 been adjudicated.” *St. Paul Fire & Marine Ins. Co. v. Vedatech Int’l, Inc.*, 245 F. App’x 588, 590  
 10 (9th Cir. 2007). The court held that a filing that “did nothing more than duplicate arguments” was  
 11 “objectively unreasonable” and warranted Rule 11 sanctions. *Id.*

12 Rimini’s filing of duplicative motions “is an abusive litigation tactic that taxes the  
 13 resources of the Court and all of the parties to a lawsuit.” *Tagle v. Fajota*, No. 2:15-CV-02082-  
 14 JCM-VCF, 2017 WL 2230334, at \*3 (D. Nev. May 22, 2017) (advising plaintiff that “continued  
 15 motion practice requesting relief that has already been denied, filing duplicative motions, or  
 16 making frivolous, unsupported requests may result in the imposition of sanctions, including a  
 17 recommendation to the district judge that he be declared a vexatious litigant or that this case be  
 18 dismissed”). See also *Williams v. Las Vegas Metro. Police Dep’t*, No. 2:18-CV-02432-APG-  
 19 VCF, 2019 WL 4658360, at \*2 (D. Nev. Sept. 23, 2019) (“[m]aking repeated requests for the  
 20 same relief is an abusive litigation tactic that taxes the resources of both the court and the  
 21 parties.”) (dismissing case); *Crittendon v. Lombardo*, No. 2:17-CV-01700-RFB-PAL, 2018 WL  
 22 6179493, at \*4 (D. Nev. Nov. 26, 2018) (“Filing duplicate motions increases the court’s workload  
 23 and . . . may result in the imposition of sanctions” including dismissal); *In re Flashcom, Inc.*, 503  
 24 B.R. 99, 133 (C.D. Cal. 2013), *aff’d*, 647 F. App’x 689 (9th Cir. 2016) (“The attempt to relitigate  
 25 this issue for a third time in the bankruptcy court (and twice in this court) during the time period  
 26 that appellees were supposed to be preparing for trial is evidence of an improper purpose in filing  
 27 the motion.”) (affirming award of sanctions under the bankruptcy equivalent of Rule 11, Rule  
 28 9011). This Court thus should sanction Rimini and its counsel under Rule 11.

1           **B. This Court Should Grant Attorneys' Fees Under 28 U.S.C. § 1927.**

2           28 U.S.C. § 1927 provides that “[a]ny attorney . . . who so multiplies the proceedings in  
3 any case unreasonably and vexatiously may be required by the court to satisfy personally the  
4 excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” 28  
5 U.S.C. § 1927. Here, Rimini’s counsel have unreasonably and vexatiously multiplied this  
6 litigation by reasserting their same previously rejected arguments before this Court.

7           Rimini’s counsel filed the Motion in “bad faith,” “knowingly or recklessly rais[ing] a  
8 frivolous argument.” *Hussein v. Dugan*, No. 3:05-CV-00381-PMP-RAM, 2009 WL 10709253, at  
9 \*2 (D. Nev. Sept. 8, 2009), *aff’d*, 454 F. App’x 541 (9th Cir. 2011) (granting attorneys’ fees for  
10 “vexatiously multiplied litigation” under the Court’s inherent power and 28 U.S.C. § 1927); *see*  
11 *also Aboulafia v. Mortg. Elec. Registration Sys., Inc.*, No. 2:12-CV-02001-GMN, 2013 WL  
12 2558726, at \*6 (D. Nev. June 8, 2013) (granting attorneys’ fees under Section 1927 where, when  
13 considered with the plaintiff’s prior litigation, the complaint and “subsequent motions and  
14 argument . . . on apparently the same issues . . . were brought recklessly, and possibly for the  
15 purpose of harassing an opponent”). As discussed above, the Motion repeats—at times  
16 essentially verbatim—Rimini’s prior failed arguments. Much as this Court previously found  
17 when awarding attorneys’ fees to Oracle, Rimini’s arguments in the Motion were “not . . .  
18 objectively reasonable position[s] to take in this litigation.” ECF No. 1164 at 13. And Rimini  
19 has been taking such positions “from the earliest part of litigation.” *Id.* Rimini’s latest frivolous  
20 motion has vexatiously multiplied this litigation. This Court should award Oracle its attorneys’  
21 fees and costs incurred in responding.

22           **C. This Court Should Sanction Rimini Under Its Inherent Powers.**

23           Rimini’s Motion is just another attempt to circumvent and undermine this Court’s lawful  
24 injunction. The Motion wastes this Court’s judicial resources with duplicative arguments merely  
25 packaged with a different motion title. This Court retains inherent authority to sanction such  
26 conduct, and Oracle respectfully submits that it should do so. *See Hussein v. Dugan*, No. 3:05-  
27 CV-00381-PMP-RAM, 2009 WL 10709253, at \*2 (D. Nev. Sept. 8, 2009), *aff’d*, 454 F. App’x  
28 541 (9th Cir. 2011) (granting attorney’s fees for “vexatiously multiplied litigation” under the

1 Court's inherent power and 28 U.S.C. § 1927).

2  
3 DATED: April 20, 2020

MORGAN, LEWIS & BOCKIUS LLP

4  
5 By: /s/ John A. Polito  
6 John A. Polito

7 *Attorneys for Plaintiffs Oracle USA, Inc., Oracle*  
8 *America, Inc. and Oracle International Corporation*  
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**CERTIFICATE OF SERVICE**

At the time of service I was over 18 years of age and not a party to this action. My business address is One Market, Spear Street Tower, San Francisco, CA 94105.

On April 20, 2020, I served the following document:

**ORACLE'S MOTION FOR SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11, 28 U.S.C. § 1927, AND THE COURT'S INHERENT AUTHORITY**

I served the document on the persons below, as follows:

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The document was served pursuant to FRCP 5(b) by sending it by electronic mail. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

1 I hereby certify that I am employed in the office of a member of the State Bar of  
2 California, admitted *pro hac vice* to practice before the United States District Court for the  
3 District of Nevada for this case, at whose direction the service was made. I declare under penalty  
4 of perjury under the laws of the United States of America that the foregoing information  
5 contained in the Certificate of Service is true and correct.

6 Dated: April 20, 2020

7 /s/ Lisa S. Lee

8 Lisa S. Lee